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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/445,844 12/15/99 YANG

S DN97-038

IM52/0921

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EXAMINER
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ART UNIT	PAPER NUMBER
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1714  
DATE MAILED:

5  
09/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/445844

Applicant(s)

YANG et al

Examiner

MEDLEY

Group Art Unit

1714

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 6-22-01
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1, 3, 5-7 and 9-19 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 3, 5-7 and 9-19 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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The Abstract has been made of record.

Applicants' amendment to the claims have overcome the 112 rejection of claims 1 and 12 for the thermoplastic matrix, the cancellation of claim 2 and claim 6 for the cross linker, and the multiple dependency of claims 6, 8, 9, 10 and 16-19.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5-7 and 9-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 12 (and their dependent claims) are indefinite for "cross linked polymer", "crosslinker" and "impact modifier", which may become<sup>over</sup> with the incorporation of claim 6 limitation for the "crosslinked polymer" and "crosslinker", and claim 5 limitation for the "impact modifier" in claims 1 and 12.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was

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commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 5-7 and 9-19 for reasons made of record in Paper No. 3 dated February 28, 2001 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Minghetti et al 5,242,968, Ghahary 5,304,592 and Cozens et al 5,130,374.

Applicant's arguments filed June 22, 2001 have been fully considered but they are not persuasive.

In response to applicant's argument that because of Minghetti interpenetrated network, the granite sheet can not be reprocessed, just like the thermoset material cannot be reprocessed or recycled, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants' attention is directed to the thermoformable sheets of Minghetti used as anti-slip surface in bathtubs and shower stalls that is reprocessed, note abstract, column 2 lines 12-15, lines 38-44 and column 5, line 62 to column 6, lines 1-5, 24-29 and 43-47.

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In response to applicant's argument that Minghetti discloses that the addition of 5 to 20% PMMA polymer is critical for controlling the particle settling and for forming the interpenetrated particle/matrix network, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants' argument is not convincing of error. Applicants' attention is directed to lines 65-68 of column 2 of the said reference for Minghetti teachings and disclosure that "the syrup or suspending medium together with the ground PMMA becomes thixotropic and advantageously does not permit the swollen particles to settle, thus achieving an even distribution. This teaching clearly rebuts applicants' argument that the PMMA polymer is critical for controlling the particle settling in the matrix. It is the combination of the syrup or suspending medium together with the PMMA particles that creates a thiotropic mixture preventing the particles from settling.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., thermoset particles that can sustain the severe shearing of multiple passes through extrusion and molding) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Ghahary is maintained for the teachings that granite - plastics are useful in molding and thermoforming and that the granite-plastics are a combination of thermoplastic and thermoset plastic in a thermoplastic matrix and the method of making said matrix, note the abstract, column 2 lines 30-66. Patentee further teaches that the granite - plastic composition is suitable for injection molding, blow molding, extrusion, etc, column 6, lines 1 to 18.

In response to applicant's argument that Cozens does not teach, suggest or disclose the presently claimed invention which is directed to a composition comprised of poly(alkyl(meth) acrylate), the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

The allegation is not convincing in that Cozens teaches that the polymeric materials used to produce its articles include polymeric materials that includes polymethyl methacrylate and that the polyvinyl chloride is preferred, note column 2 lines 28-40 and composition 5 of Table 1 of column 3 that is directed to first polymer polymethylmethacrylate and second-polymer crosslinked polymethylmethacrylate.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is (703) 308-2518. The examiner can normally be reached on Monday from Friday to 7:30 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Margaret B. Medley/om  
September 20, 2001

  
MARGARET MEDLEY  
PRIMARY EXAMINER